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OUR FILE NUMBER
892,050-215

November 3, 2003

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: ***WC Docket No. 02-359***

Dear Ms. Dortch:

Enclosed for filing is the original and four copies of Verizon's Post-Hearing Reply Brief. In addition, we are enclosing eight copies for the arbitrator. Thank you.

Sincerely,

Kimberly A. Newman

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of O'Melveny & Myers LLP

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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition of Cavalier Telephone, LLC	)	
Pursuant to Section 252(e)(5) of the	)	WC Docket No. 02-359
Communications Act for Preemption	)	
of the Jurisdiction of the Virginia State	)	
Corporation Commission Regarding	)	
Interconnection Disputes with Verizon	)	
Virginia, Inc. and for Arbitration	)	

REPLY BRIEF OF VERIZON VIRGINIA INC.

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November 3, 2003

TABLE OF CONTENTS

Page

I. INTRODUCTION 1

II. CAVALIER'S PROPOSED LANGUAGE REGARDING NETWORK REARRANGEMENTS SHOULD NOT BE ADOPTED (ISSUE C2) 2

III. VERIZON'S PROPOSED LANGUAGE IS IDENTICAL TO THAT IN THE VIRGINIA AT&T AGREEMENT AND SHOULD BE ADOPTED HERE (ISSUE C3) 6

IV. VERIZON SHOULD NOT BE RESPONSIBLE FOR POLICING THIRD PARTIES' CHARGES FOR CAVALIER-ORIGINATED TRAFFIC THAT TRANSITS VERIZON'S NETWORK (ISSUE C4) 11

V. THERE IS NO LEGAL OR POLICY BASIS TO REQUIRE THAT VERIZON ASSIST CAVALIER IN NEGOTIATING INTERCONNECTION AGREEMENTS WITH THIRD PARTIES (ISSUE C5) 15

VI. CAVALIER'S PROPOSED "INTERIM SOLUTION" TO ALTER VERIZON'S E 9-1-1 TARIFF PENDING A STATE COMMISSION PROCEEDING IS INAPPROPRIATE AND UNNECESSARY (ISSUE C6) 18

VII. THE BUREAU SHOULD REJECT CAVALIER'S PROPOSED CHANGES TO VERIZON'S LOOP OFFERING AND LOOP QUALIFICATION LANGUAGE (ISSUE C9) 21

A. Verizon Provides Non-Discriminatory Access To Its Loop Qualification Database 21

B. Cavalier Is Not Entitled To Expedited Maintenance Intervals For xDSL Loops 24

C. Verizon Provides DS-1 Loops On Non-Discriminatory Terms 25

D. Verizon Does Not Use Spectral Density Masks To Prevent Cavalier From Deploying "ReachDSL" Technology 26

E. Cavalier Provides No Compelling Evidence For The Bureau To Import Rates For Loops And Loop Conditioning From Nearby States 28

VIII. THE BUREAU SHOULD REJECT CAVALIER'S PROPOSED CHANGES TO VERIZON'S PROCESSES FOR PROVISIONING DARK FIBER (ISSUE C10) 30

A. Cavalier's Dark Fiber Queue Should Not Be Adopted 30

B. There Is No Reason For Verizon To Provide Cavalier's Detailed Dark Fiber Maps 32

C. Cavalier's Proposed "Joint Field Survey" Is Burdensome And Unnecessary 33

D. There Is Not Need For A Dispute Resolution Mechanism Specifically For Dark Fiber Disputes 34

TABLE OF CONTENTS
(continued)

Page

E. Cavalier's Request For A More Burdensome Dark Fiber Inquiry Process Should Also Be Rejected Because Cavalier Can Obtain The Information It Needs Through A Field Survey 35

IX. THE BUREAU SHOULD REJECT CAVALIER'S PROPOSAL FOR AN IDLC UNBUNDLING TRIAL BECAUSE VERIZON WILL PROVIDE CAVALIER WITH ACCESS TO CUSTOMERS SERVED BY IDLC IN COMPLIANCE WITH THE TRIENNIAL REVIEW ORDER (ISSUE C14) 36

X. THE BUREAU SHOULD REJECT CAVALIER'S PROPOSAL TO OVERHAUL THE POLE ATTACHMENT PROCESS IN VIRGINIA (ISSUE C16). 38

XI. CAVALIER'S ARGUMENTS DO NOT SUPPORT ADOPTION OF ITS PROPOSED PENALTY REGIME FOR INAPPROPRIATE CUSTOMER CONTACTS (ISSUE C17) 42

XII. VERIZON'S PROPOSED LANGUAGE ON DIRECTORY LISTINGS IS FAIR TO BOTH PARTIES AND OFFERS A REMEDY FOR ERRORS AND OMISSIONS THAT IS COMPARABLE TO WHAT VERIZON PROVIDES TO ITS RETAIL CUSTOMERS (ISSUE C18) 46

A. Cavalier Has Failed To Justify Why Verizon Should Be Required To Certify The Accuracy Of Each Cavalier Listing 47

B. Cavalier's New Proposed Credit Language Suffers From The Same Flaws As Its Previous Proposal And Should Be Rejected 49

C. Cavalier's Remaining Proposals Concerning Directory Listing Should Be Rejected 51

XIII. CAVALIER MISREPRESENTS THE SCOPE OF VERIZON'S PROPOSED ASSURANCE OF PAYMENT PROVISIONS (ISSUE C21) 53

XIV. THE BUREAU SHOULD ADOPT THE EMBARGO LANGUAGE THAT IT APPROVED IN THE VIRGINIA ARBITRATION (ISSUE C24) 58

XV. CAVALIER FAILS TO JUSTIFY ITS UNPRECEDENTED PROPOSAL FOR AN UNREASONABLE AND UNNECESSARY EXCEPTION TO THE AGREEMENT'S LIMITATION OF LIABILITY PROVISION (ISSUE C25) 59

XVI. THE BUREAU SHOULD REJECT CAVALIER'S PROPOSED CHARGES FOR WINBACKS AND TRUCK ROLLS (ISSUE C27) 62

A. The Bureau Lacks Jurisdiction To Set The "UNE-Related" Rates That Cavalier Proposes To Charge Verizon 63

B. Cavalier's Proposed Truck Roll Charge Is Inappropriate 65

C. Cavalier Cannot Charge Verizon To Install UNE Loops Because It Does Not Provide Verizon With UNE Loops 70

I. INTRODUCTION

Many of the issues in this proceeding have been decided before, either by the Federal Communications Commission ("Commission") in its decision granting Verizon Virginia Inc.'s ("Verizon's") application to provide long distance service in Virginia ("*Virginia § 271 Order*") or by the Wireline Competition Bureau (the "Bureau") in its June 17, 2002 Order in the Virginia Arbitration proceeding ("*Virginia Arbitration Order*"). But Cavalier Telephone L.L.C.'s ("Cavalier's) post-hearing brief ignores almost all of the relevant precedent. For example, Cavalier never attempts to explain why the Bureau should reject the Commission's decision that Verizon is providing services such as unbundled loops, pole attachments, directory listings, and dark fiber in compliance with the Telecommunications Act of 1996 ("Act"), or why the Bureau should depart from its own decision in the *Virginia Arbitration Order* about the scope of Verizon's billing obligations when Verizon provides tandem transit services. In addition, in many instances, such as dark fiber, IDLC, and pole attachments, Cavalier does not even argue that Verizon's position is contrary to the Act's requirements.

For other issues, Cavalier similarly ignores the lack of legal and factual support for its position. For example, Cavalier attempts to shift to Verizon network rearrangement costs that all other carriers bear on their own and to impose unwarranted penalties that ignore existing performance assurance plans. And Cavalier continues to press issues like what should be in Verizon's retail E 9-1-1 tariff that simply do not belong in this proceeding.

The Bureau should reject Cavalier's proposals and adopt Verizon's contract language.

II. CAVALIER'S PROPOSED LANGUAGE REGARDING NETWORK REARRANGEMENTS SHOULD NOT BE ADOPTED (ISSUE C2)

Cavalier proposes language that would require Verizon to reimburse Cavalier for expenses associated with network rearrangements. This language should be rejected because the law does not support it. Cavalier is entitled by law to a single point of interconnection ("POI") on Verizon's network within a LATA. 47 U.S.C. § 251(c)(2)(B). That legal right is memorialized in Section 4 of the proposed interconnection agreement, a section to which Cavalier has agreed – twice. This right means that Cavalier does not have to pay for any transport facilities on Verizon's side of the single POI. However, Cavalier has no other legal basis – nor does it cite any – to assert that it should not incur *any* costs for network rearrangements. No carrier has ever requested – much less received – the right to impose upon Verizon the costs it incurs for network rearrangements.

Cavalier mistakenly asserts that "[c]urrently, Cavalier must build or purchase facilities to maintain interconnection with Verizon if ... Verizon rearranges any portion of its network." *Cavalier Post-Hearing Brief* at 1-2. Earlier this year, Cavalier agreed to an amendment to its interconnection agreement that became effective in April. *See Amendment No. 3 to the Interconnection Agreement between Verizon Virginia Inc. and Cavalier Telephone, L.L.C.*, dated April 1, 2003, at Section 2.1.1, attached as Exhibit 1 ("Each Party, at its own expense, shall provide transport facilities to the technically feasible Point(s) of Interconnection on Verizon's network in a LATA selected by Cavalier."). Both that amendment and the contemplated interconnection agreement give Cavalier the right of a single POI. *See* Agreement Section 4.1.1 ("Each Party, at its own expense, shall provide transport facilities to the technically feasible Point(s) of Interconnection on Verizon's network in a LATA selected by Cavalier."). Thus, if Verizon re-homes a tandem in a LATA, and Cavalier decides not to establish a POI at that

tandem (which it is entitled, but not required, to do), Verizon is contractually obligated to pay the costs of transporting Cavalier's traffic from the POI to the new tandem. *Hearing Tr.* at 30:9-20 (D'Amico) Therefore, Cavalier's concern that it "could not possibly have any idea how the arrangement seemingly suggested by Verizon might actually work" (*Cavalier Post-Hearing Brief* at 4) is unfounded in light of the fact that the parties have been operating with this network architecture since April 2003.

Cavalier also spends pages of its post-hearing brief trying in vain to deny the obvious: if Cavalier wants to avoid the expense associated with network rearrangements, it can interconnect with other carriers directly. First, Cavalier wrongly implies that Verizon has an obligation to inform Cavalier of its right to interconnect with others. *Cavalier Post-Hearing Brief* at 3. The Act imposes no duty on incumbents to dispense business and legal advice. Second, Cavalier cites to a dispute between Verizon and Comcast over Comcast's obligation to connect directly at a new tandem as support for Cavalier's contention that Verizon will require Cavalier to connect directly to a new tandem in the future. But Cavalier itself highlights the irrelevance of Comcast's dispute by acknowledging "that situation involved contract language that referred to points of interconnection selected by mutual agreement, and not solely by the CLEC...." *Cavalier Post-Hearing Brief* at 3; *see* Agreement Section 4.1.1. It is irrelevant whether Cavalier or other CLECs have paid for certain facilities in the past, because their rights were determined by their contracts with Verizon.

Third, Cavalier illogically argues that Verizon has not proposed any language that would allow Cavalier to interconnect with other carriers – as if Cavalier's interconnection rights with others should be memorialized in its interconnection agreement with Verizon. ("Verizon has not proposed any language in the proposed ICA that would allow Cavalier **not** to connect directly

with a new tandem." *Cavalier Post-Hearing Brief* at 3 (emphasis in original). To the contrary, Cavalier is free to interconnect directly with other carriers unless it somehow contracted away this right, which it has not.

Finally, Cavalier asserts that Verizon "overstates the availability of direct interconnection" because "Cavalier cannot force direct interconnection on another carrier." *Cavalier Post-Hearing Brief* at 6. To be sure, no CLEC can be forced to do business with another, but CLECs have strong financial incentives to interconnect with each other since their respective customers generally want and need the ability to call each other. Simply put, despite Cavalier's claims to the contrary, nothing prevents Cavalier from interconnecting with other carriers.

Cavalier's remaining arguments regarding its concerns over "Verizon's purported SPOI concept" (*Cavalier Post-Hearing Brief* at 4) are irrelevant. The concept of a single point of interconnection is not "Verizon's purported SPOI concept" as asserted by Cavalier, but a legal requirement that Verizon and all other ILECs provide all CLECs with at least one POI on the ILEC's network in a LATA. 47 U.S.C. § 251(c)(2)(B). All of Cavalier's remaining arguments, asserted in conclusory fashion, appear to take issue with this legal right – a right that Cavalier need not even exercise. Cavalier suggests that having a "SPOI" at a tandem is a bad idea because 1) Verizon may not provide sufficient capacity between the "SPOI" and the new access tandem (*Cavalier Post-Hearing Brief* at 4), 2) most of Cavalier's traffic is exchanged through end-offices (*Cavalier Post-Hearing Brief* at 5), 3) tandem switching could discourage facilities-based competition (*Cavalier Post-Hearing Brief* at 6), and 4) Cavalier has had past disputes with Verizon regarding the location of POIs (*Cavalier Post-Hearing Brief* at 4). None of these arguments here is relevant to the contract language at issue. Cavalier's arguments regarding the

relative merits of having a "SPOI" at a tandem, which, even if true (and they are not), have absolutely nothing to do with this issue before the Bureau: whether Cavalier is entitled to compensation for network rearrangements.

Tandem re-homings, the primary network rearrangement of which Cavalier complains, are periodically necessary to prevent tandem exhaust, and these re-homings benefit all carriers. *Albert Panel Direct* at 6:2-6. Cavalier, like all other carriers, benefits from these tandem re-homings; Cavalier acknowledges this benefit in its post-hearing brief when it expresses concern about "blockage." *Cavalier Post-Hearing Brief* at 4. The Bureau has acknowledged that tandem re-homing helps all carriers when it recognized Verizon's need to add trunk groups and facilities in order to prevent trunk blockage. *Virginia Arbitration Order* ¶¶ 155-156. Nearly 275,000 CLEC trunks have been added in Virginia as a result of "explosive CLEC growth." *Hearing Tr* at 47:6-7 (Albert). Because all carriers benefit from tandem re-homing, Verizon does not compensate any carriers (CLEC, IXC, independent, or wireless) for network rearrangements (*Albert Panel Direct* at 5:10-13; *Hearing Tr* at 10:4-10 (Albert) ("We have not ... paid one nickel to any independent telephone company associated with network rearrangements.")), nor has a single carrier ever asked Verizon to compensate it for its own network rearrangement costs (*Albert Panel Direct* at 6:6-7; *Hearing Tr.* at 10:10-12 (Albert) ("[W]e've never had either an independent ... a CLEC or wireless carrier request that we pay any of their costs associated with a network rearrangement.")).

Cavalier's primary justification for its proposal – that Verizon has in the past compensated independent telephone companies for their network rearrangements – has been proven untrue. *Hearing Tr.* at 10:4-10 (Albert). Indeed, Cavalier appears to have abandoned that argument in its post-hearing brief. Cavalier's secondary justification for its proposal – that it

should not be required to pay for the transport to a new tandem – is now moot due to the parties current and prospective interconnection architecture. Therefore, the Bureau should reject Cavalier's proposal.

III. VERIZON'S PROPOSED LANGUAGE IS IDENTICAL TO THAT IN THE *VIRGINIA AT&T AGREEMENT* AND SHOULD BE ADOPTED HERE (ISSUE C3).

This issue involves Verizon's tandem transit services and the billing information that Verizon provides to Cavalier when a carrier other than Verizon or Cavalier originates a call and sends it to Verizon's tandem which, in turn, sends the call to Cavalier for completion. Verizon's proposal is exactly the same as the provision in the AT&T agreement resulting from the *Virginia Arbitration Order* (the "*Virginia AT&T Agreement*"). *Virginia Arbitration Order* ¶ 628; Verizon Proposed Sections 6.3.1, 6.3.7, 7.2.2. Those sections require Verizon to follow industry standards, including standards set by the Ordering and Billing Forum ("OBF"). The Bureau specifically approved this approach in the *Virginia Arbitration Order* and should do so again here.

Verizon provides Cavalier the same billing information it receives from the originating carrier which is the same information Verizon uses to bill for its own terminating services and that OBF guidelines require. *Smith Direct* at 5:15-19, 6:2-3, 7:16-17; *Smith Rebuttal* at 6:12-14; *Hearing Tr.* 87:11-15, 128:1-12, 129:17 – 131: 3, 146:19-22, 147:5-12, 148:17 – 149:15 (Smith). Cavalier, however, wants more information and argues that Verizon alone should be responsible for getting it. *Cavalier Post-Hearing Brief* at 7. Remarkably, Cavalier argues that if Verizon does not "police the records" to ensure that Cavalier receives all of the information it deems necessary for billing for third party traffic, Verizon should pay penalties intended to guarantee Cavalier's revenue stream. *Cavalier Post-Hearing Brief* at 17. The law requires nothing of the

sort. Furthermore, because the Act does not require Verizon to provide tandem transit services at all (*Virginia Arbitration Order* ¶ 117), if the Bureau imposes Cavalier's proposal on that service, the Bureau will simply encourage Verizon to stop providing tandem transit service altogether

In the *Virginia Arbitration Order,* the Bureau made it clear that, when an incumbent telephone company provides tandem transit services, it is not obligated to serve as a billing intermediary for the terminating carrier. *Virginia Arbitration Order* at ¶¶ 117, 119 (rejecting such a proposal from WorldCom). Cavalier does not even mention this ruling, much less attempt to distinguish it.

Instead, Cavalier complains at length that it does not always receive the billing information that it wants. *Cavalier Post-Hearing Brief* at 15-17. There are several different reasons why Cavalier does not always receive its desired billing information. For example, Cavalier admits that many of its concerns result directly from the actions of third parties over whom Verizon has no control. *See Virginia § 271 Proceeding*, Cavalier Oct. 14, 2002 Ex Parte Letter at 1-2 (footnote omitted) (billing concerns are "an industry wide problem that defies correction); *Cavalier Post-Hearing Brief* at 13 (describing billing problem resulting when "rogue IXC[s] fail to perform database dips). Cavalier's own witness described in detail how the source of the problem is third party carriers trying to "fraudulently get around the system" by failing to provide information Cavalier deems necessary to bill for their calls. *Hearing Tr.* at 139:1-21 (Whitt). Verizon has made the same point. *See Smith Direct* at 4:15-16 (Verizon can only pass information other carriers provide to it); *Smith Rebuttal* at 7:24 – 8:2 (billing affects entire industry); *Hearing Tr.* at 96:17-19, 97:19 – 98:6 (Smith) (industry problem regarding LNP lookups); *Hearing Tr.* at 124:7 – 125:14 (Smith) (Verizon cannot always identify originating carrier).

Therefore, to some extent, the problem is not with Verizon but with the third party carriers who are failing to provide the information Cavalier seeks. *Smith Rebuttal* at 6:8-15. In addition, this problem is exacerbated by Cavalier's inability or refusal to process the information Verizon provides. *See Hearing Tr.* at 148:15 – 149:15 (Smith) (Verizon provides Cavalier all of the information it needs to bill); 151:3 – 152:17 (Smith/Whitt) (Cavalier refuses to use records provided by Verizon because it deems such use "impractical").

Cavalier also acknowledges that some of the additional billing information it wants, such as Carrier Identification Codes ("CIC") and Jurisdictional Information Parameters ("JIP"), are not required by industry guidelines set by the OBF. *Cavalier Post-Hearing Brief* at 13-14. But Cavalier claims that Verizon's requirements to provide billing information should not be defined by the "dubious dictates" of the OBF. *Cavalier Post-Hearing Brief* at 13. The Bureau has concluded otherwise. In the *Virginia Arbitration Order,* the Bureau specifically rejected an AT&T request that Verizon provide more information than OBF industry guidelines require:

> AT&T has neither disputed Verizon's assertion that it is contractually committed to follow the OBF guidelines nor explained why it requires additional billing information beyond that already agreed to in the contract. We find that Verizon's concerns about having to juggle varying degrees of call detail for multiple and separate interconnection agreements are legitimate and that it is in the interest of all carriers to be able to rely on "an industry forum that ensures carriers exchanging information can process, exchange, and read the same records.

Virginia Arbitration Order ¶ 628 (citations omitted).

In addition, Cavalier agrees that, in spite of these billing information problems, it could render bills for its terminating services. *Cavalier Post-Hearing Brief* at 17; *Haraburda Direct* at 5:5-7. Verizon experiences the same shortcomings in billing information provided by third parties when it bills for its own terminating services but is able to bill for terminating services. Verizon witness Smith explained in detail how Verizon provides to Cavalier the same

information that Verizon uses to bill terminating services. *Smith Direct* at 5:15-19, 6:2-3, 7:16-17; *Smith Rebuttal* at 6:12-14; *Hearing Tr* 87:11-15, 128:1-12, 129:20 – 131:3, 146:19-22, 147:5-12, 148:17 – 149:15 (Smith). Verizon witness Smith also explained how Cavalier could render bills using that information. *Smith Direct* at 4-7; *Smith Rebuttal* at 4:22 – 5:15; *Hearing Tr.* at 146:19-22 (Smith). For example, Cavalier complains that it cannot bill appropriately where Verizon populates the "From Number" in the "To Number" data field on calls for which the originating carrier provides no originating number data. It specifically cites an instance where Focal provided no "From Number" data. *See Cavalier Post-Hearing Brief* at 15. Witness Smith explained that Verizon populates the "To Number" in the "From Number" data field as an accommodation to some independent carriers who could not otherwise process the records. In order to bill for such traffic, and identify Focal as the "owner" of the calls, Cavalier can replace its own records with Verizon's meet point billing records. *Hearing Tr.* at 150:8 – 151:12.

Witness Smith also explained how Cavalier could bill for calls where Cavalier's billing record does not contain a CIC or an Originating Company Number ("OCN"), another situation about which Cavalier complains. *Hearing Tr* at 128:16-20, 129:7 – 130:8 (Smith responding to Cavalier claim that 17% of calls missing CIC or OCN by explaining that Cavalier needs to use the 11-0-01 records which in virtually all cases include the CIC or OCN); *Hearing Tr.* at 146:19-22 (Smith). Verizon also compensates for gaps in call-specific information by using factors negotiated with originating carriers, an option also available to Cavalier. *Hearing Tr* at 130:18 – 131:10 (Smith); *Smith Direct* at 9:3-7. These methods are standard industry practice and Cavalier could adopt them.

Cavalier also wrongly accuses Verizon of misrouting traffic and cites to provisions in the agreement specifying the types of traffic that belong on distinct trunk groups. As witness Smith

explained, and Cavalier admitted, what Cavalier claims is access traffic being misrouted over local trunks is likely roaming wireless traffic correctly routed over local trunks Cavalier is simply misreading its own data. *See Smith Rebuttal* at 2:4-13; *Cole Surrebuttal* at 2:18-20 (agreeing with Mr. Smith that wireless minutes could account for faulty data). Similarly, traffic that Cavalier asserts is local traffic misrouted over access trunks may in fact be access traffic for which no "From Number" was provided to Verizon by a third party originating that traffic. For these calls, it is common practice among incumbents to populate the "To Number" in the "From Number" field. *Smith Rebuttal* at 6:19-25.

Cavalier also complains that access traffic is "misrouted" over local interconnection trunks where an interexchange carrier fails to follow Commission guidelines and incorrectly forward a call to a Verizon end office without first performing the appropriate database dip. *Hearing Tr* at 95:2 – 98:6 (Stubbs/Smith). In this limited circumstance Cavalier could receive access calls over local interconnection trunks because Verizon's priority, consistent with industry standards and a ubiquitous communications network, is to find a way to complete traffic delivered to it. *See Hearing Tr.* at 96:17-21 (Smith) (describing Verizon's goal to complete calls even though industry problem exists with originating carriers refusing to follow Commission guidelines). But even in this example it is the *interexchange carriers* that are at fault, not Verizon. Cavalier should work with Verizon and the industry to address this limited situation. Cavalier's self-serving solution that Verizon should block such traffic rather than pass it through to Cavalier would raise a host of problems, the most obvious being that customers would not be able to complete calls. *See Hearing Tr.* at 154:19 – 157:1 (Smith) (describing technical and public policy issues associated with blocking calls); *Smith Rebuttal* at 7-11 (Verizon cannot selectively block traffic based on information passed to it by an originating carrier).

Cavalier's "police or pay" proposal asks the Bureau to waive the equivalent of a magic-wand to make all of Cavalier's billing concerns go away. Under Cavalier's proposal, Cavalier would be responsible for nothing, Verizon would face strict liability for failing in any way to satisfy Cavalier's "any information deemed necessary" standard, whether Verizon has such information or not. That is no solution at all.

Verizon's proposal reflects standard industry billing practices and requires the parties to follow industry guidelines *Smith Direct* at 4:2-8. Verizon will automatically incorporate industry solutions into its processes as they develop. By contrast, Cavalier's proposal would fix nothing. It will only absolve Cavalier of responsibility for its own billing practices and would require Verizon to compensate Cavalier any time Cavalier claims it does not have information it needs to properly bill *See Smith Rebuttal* at 7-8 (noting that it is not possible to fix problems that affect an entire industry by penalizing Verizon alone). Worse, it would require Verizon to implement costly and non-industry standard modifications to its billing system that could negatively affect other carriers. *Hearing Tr.* at 127:8-20 (Smith). Cavalier's proposal would also weaken the OBF by encouraging parties to forego the industry forums in favor of targeted rulings in two-party arbitrations. *Smith Direct* at 10:6-10.

For these reasons, the Bureau should reject Cavalier's proposal and adopt Verizon's.

IV. VERIZON SHOULD NOT BE RESPONSIBLE FOR POLICING THIRD PARTIES' CHARGES FOR CAVALIER-ORIGINATED TRAFFIC THAT TRANSITS VERIZON'S NETWORK (ISSUE C4)

Cavalier's position on issue C4 must be rejected as a matter of law. Cavalier is solely responsible for charges associated with its own traffic and Verizon is entitled to be made whole for any charges that third parties assess on Verizon as a result of Verizon's transiting Cavalier's traffic. In fact, the Bureau has made clear that Verizon is not required to serve as a billing

intermediary between third parties transiting Verizon's network. *Virginia Arbitration Order* ¶ 119. Verizon is not even required to transit traffic at all. *Id.* at ¶¶ 117, 119. Cavalier's language – which would require Verizon to police charges between third parties – thus goes well beyond what the law requires.

When a carrier voluntarily provides transit services, it has not agreed to become a billing intermediary. Cavalier, however, seeks to force Verizon into this role by limiting Cavalier's obligation to compensate Verizon to only "proper" charges billed by third parties terminating Cavalier's traffic. It seeks to impose this requirement even though it admits that directly billing the originating carrier is the industry standard and that it has not experience any "improper" charges from Verizon. *Hearing Tr.* at 172:2-4 (Clift); 173:4-14 (Clift). There is no legal basis for imposing this obligation upon Verizon, as the Bureau has confirmed that Verizon is not required "to serve as a billing intermediary between [a CLEC] and third-party carriers with whom it exchanges traffic transiting Verizon's network." *Virginia Arbitration Order* ¶ 119. Whether such charges are "proper" is an issue between Cavalier and the third-party carrier. Verizon is neither compensated for, nor legally obligated to become involved in, such determinations.

In its post-hearing brief, Cavalier erroneously asserts that it is "unfair and unreasonable to create a new unfettered right in Verizon to pass along to Cavalier any third-party charge, regardless of legality." *Cavalier Post-Hearing Brief* at 18. To the contrary, it would be unfair and unreasonable to require Verizon to bear the burden of any charges Cavalier refuses to pay. Cavalier, not Verizon, is responsible for charges associated with Cavalier's traffic; expecting Cavalier to pay for its own traffic creates no new rights for Verizon. 47 C.F R. § 51.703(b). Verizon's proposal reflects Verizon's offer to cooperate with Cavalier to dispute any charges

Cavalier deems inappropriate. Verizon's Proposed Section 7.2.6; *Smith Direct* at 11:7-9, 12:13-15; *Hearing Tr.* at 165:16 – 166:2 (Smith). But if Verizon is ultimately ordered to pay charges levied on it for Cavalier's traffic, Cavalier should indemnify Verizon for these charges. Verizon's Proposed Section 7.2.6. If Cavalier's concern is that Verizon will not appropriately dispute charges or advocate for Cavalier's rights, it can exclude Verizon from the process entirely by entering into appropriate arrangements with third parties for direct billing to Cavalier. *See* 47 U.S.C. § 251(b)(5); *Virginia Arbitration Order* ¶ 119 (Entering into reciprocal compensation arrangements is a duty placed on all local exchange carriers and Verizon is not required to incur the burdens of negotiating such arrangements with third-party carriers on competitors' behalf.).

Cavalier also mischaracterizes Verizon's position on reciprocity. Verizon agrees with Cavalier that the transit provisions of the agreement should be reciprocal, but Verizon's proposal to address this issue is simpler than Cavalier's. *Smith Direct* at 13:2-7; *Smith Rebuttal* at 8:6-9; *Hearing Tr.* at 114:12 – 115:2, 118:15 – 16 (Smith). To accomplish reciprocity, the agreement need only provide that if and when a third-party carrier's central office subtends a Cavalier central office, Cavalier will make available to Verizon a service arrangement equivalent to the tandem transit service Verizon provides to Cavalier, on terms and conditions no less favorable to Verizon than those Verizon provides to Cavalier. Under Verizon's proposal, Cavalier would be able to impose the same non-billing intermediary conditions on its service as does Verizon on its own, but without modifying in advance numerous detailed contract provisions. Cavalier's proposal, by contrast, attempts to make each of the transit provisions reciprocal from the outset of the agreement, a complicated and potentially confusing proposition. *Smith Direct* at 13:2-7.

In addition, Cavalier incorrectly argues that Verizon's proposal would require a contract

amendment, further arbitration, and additional use of the Bureau's resources. *Cavalier Post-Hearing Brief* at 20-21. Because Cavalier does not currently offer a transit service, Verizon's proposal seeks only to ensure that if a third party subtends a Cavalier central office, Cavalier will be contractually obligated to make available *to Verizon* a tandem transit service like the service Verizon offers to Cavalier. *See Hearing Tr.* at 174:17-19 (Clift admission that Cavalier does not provide a transit service to Verizon). If Cavalier does so, Verizon may use that service. If Cavalier does not provide the transit service, Verizon will have a claim for breach of contract. In neither case will Verizon's proposal necessitate a contract amendment or further arbitration.

Cavalier also erroneously claims that Verizon's proposal gives Verizon indemnification or other rights Cavalier would not have if it offered an equivalent transit service. Because Cavalier would be obligated only to offer an equivalent service on terms and conditions no *less* favorable than that offered by Verizon, Cavalier could include comparable indemnification so long as they are no more onerous than Verizon's indemnification provisions. In short, Verizon's proposed language protects Cavalier's ability to limit its service in the same manner as Verizon limits its own service, including its rights to seek indemnification from Verizon for third-party charges assessed on Cavalier for Verizon-originated traffic. Of course, if a third party subtends a Cavalier central office, Verizon would remain free to seek direct connection and/or billing with that carrier, eliminating the need for reciprocity altogether.

Verizon's proposal reflects the law and sound policy by requiring Cavalier to be responsible for third-party charges associated with Cavalier's own traffic. Verizon agrees with Cavalier that "[n]ormal industry practice is for the terminating carrier to bill the originating carrier directly, and not the tandem transit provider" and that "[n]either Cavalier nor Verizon should be liable for improperly assessed third-party charges." *Cavalier Post-Hearing Brief* at

17, 18 But it is neither Verizon's responsibility to ensure that third-party carriers bill Cavalier directly nor to audit bills Verizon receives for Cavalier's traffic. The Bureau should reject Cavalier's proposal to require Verizon to police such third-party charges, as well as its numerous, unnecessarily complicated contract edits.

V. THERE IS NO LEGAL OR POLICY BASIS TO REQUIRE THAT VERIZON ASSIST CAVALIER IN NEGOTIATING INTERCONNECTION AGREEMENTS WITH THIRD PARTIES (ISSUE C5).

The Bureau has already made clear that Verizon is not required to negotiate interconnection arrangements with third parties on behalf of competitors. Nevertheless, Cavalier continues to argue in favor of burdensome and inefficient negotiation requirements that would force Verizon to do just that.

The law on this issue is clear. All local exchange carriers are required to interconnect, and establish reciprocal compensation arrangements for the transport and telecommunications of traffic. 47 U.S.C. §§ 251(a)(1), 251(b)(5). A LEC is *not* required to help another LEC fulfill these obligations by participating in its contract negotiations with other parties. *Virginia Arbitration Order* ¶ 119.

Cavalier neglects even to mention the legal standard, let alone explain how its proposal is consistent with it. Instead, Cavalier claims the Bureau should require Verizon to assist Cavalier's negotiations because such assistance will "further the goal of widespread direct interconnection." *Cavalier Post-Hearing Brief* at 22. According to Cavalier, if Verizon does not timely participate in Cavalier's negotiations with third parties, Cavalier will be without "critical data" and its negotiations will break down. Cavalier cites its negotiations with Cox as an example of how information about Verizon's financial arrangement other carriers might "shave[] months or years off" of Cavalier's negotiations. *Cavalier Post-Hearing Brief* at 23. But

Cavalier never explains how the law requires Verizon to disclose such information to Cavalier or how it otherwise supports adoption of Cavalier's proposal.

The other reasons Cavalier offers in support of its proposal are likewise without merit. First, Cavalier admitted at the hearing that the information it claims it needs is readily available without involving Verizon. *Hearing Tr.* at 177:22 – 179:1 (Koerner/Clift). Cavalier also admitted at the hearing that it has successfully entered into agreements with third parties without Verizon's assistance, an admission that contradicts its claims that Verizon has data "critical" to Cavalier's negotiations *Clift Direct* at 4:17-19, 5:3, *Hearing Tr* at 182:11-13 (Clift). Cavalier also ignores the fact that it can simply review Verizon's interconnection agreements on file with the Virginia SCC to obtain the information it claims it needs from Verizon. 47 U.S.C. § 252(e).

Cavalier also claims that Verizon's involvement may speed up negotiations that tend to be delayed unnecessarily But, as Verizon witness Smith explained, lengthy interconnection negotiations are not uncommon and negotiation delays may occur for any number of reasons. *Smith Rebuttal* at 9:1-2. There is no guarantee that Verizon providing information about its financial arrangements with third parties would speed these negotiations. Moreover, the information Cavalier seeks is likely to be proprietary and/or competitively sensitive, so that Verizon would not be able to supply it to Cavalier in any event. *Smith Rebuttal* at 9:14-16. Cavalier simply ignores all of these facts in its post-hearing brief.

Cavalier also implies that Verizon will intentionally hamper Cavalier's negotiations with third parties in order to preserve its revenue from transit and access fees but, again, the evidence fails to supports this accusation. *Cavalier Post-Hearing Brief* at 24. Verizon's proposed language states "[n]either party shall take any actions to prevent the other Party from entering into a direct and reciprocal traffic exchange agreement with any carrier to which it originates, or

from which it terminates, traffic." Verizon's Proposed Section 7.2.8. And, Section 7.2.4, which the parties already agreed to, expressly limits the amount of traffic Cavalier may transit over Verizon's network – and thereby the amount of revenue Verizon receives for such traffic. Section 7.2.3, moreover, obligates Cavalier to use its best efforts to enter into direct interconnection arrangements with third parties. These sections clearly show Verizon's intent to limit the amount of Cavalier-originated traffic passing through Verizon's network to third parties. They are entirely inconsistent with any attempted scheme by Verizon to preserve and expand revenue from transit traffic.

Cavalier also wrongly claims that an exhibit to Mr. Clift's testimony – an *ex parte* letter from Verizon to the Commission on transit traffic – supports its claim that Verizon is trying to prevent direct interconnection between Cavalier and other carriers. As Verizon explained in its brief, Cavalier's exhibit shows only that Verizon has been consistent in its position that it has no legal obligation to provide transit service and that limiting such traffic is in the public interest. *See Clift Rebuttal*, Exhibit MC-2R. It does nothing to support Cavalier's claim that Verizon "stonewalls" Cavalier in order to prevent carriers from interconnecting.

Finally, Cavalier's proposal will not "further the goal of widespread direct interconnection." *Cavalier Post-Hearing Brief* at 22. Requiring Verizon to provide assistance consisting of "timely providing information, timely responding to inquiries" and "participating in discussions and negotiations" is so vague and burdensome that it will only introduce confusion into the parties' relationship and increase the likelihood of disputes. Cavalier Proposed Section 7 2.8.; *Smith Direct* at 13:12-13, 14:9-17; *Smith Rebuttal* at 9:7-16. Even though Verizon is not required to assist Cavalier at all, Cavalier unfairly criticizes Verizon's proposal to do so as a "refusal to make a meaningful proposal to facilitate such relationships." *Cavalier Post-Hearing*

Brief at 24. Verizon's proposal is specific; it requires provision of certain contact information, and contains an agreement by the parties to make commercially reasonable efforts to schedule a meeting between Cavalier and a third party should Cavalier's efforts to negotiate fail.

The Bureau should adopt Verizon's proposal because it is a reasonable, good faith effort to aid Cavalier in its negotiations, even though the law does not require Verizon to do so. Cavalier's proposal is unreasonable, burdensome, and is inconsistent with the law.

VI. CAVALIER'S PROPOSED "INTERIM SOLUTION" TO ALTER VERIZON'S E 9-1-1 TARIFF PENDING A STATE COMMISSION PROCEEDING IS INAPPROPRIATE AND UNNECESSARY (ISSUE C6)

Cavalier appears to agree that the Virginia SCC's proceeding is the proper place to decide the retail E 9-1-1 issues it raises, but suggests that it is entitled to an "interim solution, pending any broader changes by the SCC in Case No. PUC-2003-00103." *Cavalier Post-Hearing Brief* at 27.[1] However, Cavalier's "interim solution" would impact the rights of the municipalities and carriers who are already participating in that proceeding and could potentially undermine the Virginia proceeding's outcome. This is because if the Bureau rules differently from the Virginia SCC, then CLECs dissatisfied with the outcome of the Virginia SCC's proceeding could opt into Cavalier's interconnection agreement with Verizon under Section 252(i), circumventing the Virginia SCC decision A bilateral arbitration is not the proper forum for altering Verizon's E 9-1-1 services tariff, which impacts municipal governments and CLECs throughout Virginia, not just Cavalier. Unlike this two-party arbitration, the Virginia SCC's proceeding offers all interested parties – local governments, CLECs, and Verizon – an opportunity to participate. *See Virginia Hearing Examiner's Report* at 131. The Virginia SCC has completed the comment portion of that proceeding, in which CLECs, local governments, industry associations, the office

[1] *See also Order for Notice and Comment or Requests for Hearing, Ex Parte In the Matter of Establishing Rules Governing the Provision of Enhanced 911 Service by Local Exchange Carriers*, Case No PUC-2003-00103 (Virginia SCC August 1, 2003)

of the Attorney General, consumers, independent telephone companies, and Verizon have filed comments. The Bureau should not be deciding issues that are already pending and properly before a state commission

Cavalier contends its language should be adopted to address a dispute with Chesterfield County involving "double-billing" for "overlapping services." *Cavalier Post-Hearing Brief* at 26 However, Chesterfield County is participating in the Virginia SCC's proceeding and is withholding the disputed amount from bill payments to Verizon until the Virginia SCC's proceeding is concluded. *See Cavalier Post-Hearing Brief*, Confidential Ex. C6-1 (Letter from Chesterfield County Assistant County Attorney to Verizon). *See also* Comments of Chesterfield County, Virginia Emergency Communications Center at 3, *Ex Parte: In the Matter of Establishing Rules Governing the Provision of Enhanced 911 Service by Local Exchange Carriers*, Case No. PUC-2003-00103, (filed Oct. 9, 2003) ("Chesterfield ECC submits that more detailed guidance should be provided to the carriers as to how to avoid duplicative billing"). Thus, Chesterfield County has already taken the interim step that Cavalier is asking the Bureau to take.

In addition, Cavalier's post-hearing brief, like its testimony and filings throughout this proceeding, fails to acknowledge a crucial fact: as the incumbent LEC in Virginia, Verizon has the unique obligation of providing E 9-1-1 services to customers in all Virginia counties, cities, and towns. *See Green Direct* at 2:19 – 3:4; *Green Rebuttal* at 3:20-23; Verizon's Miscellaneous Service Agreements Tariff, S.C.C.-Va.-No. 211, Section 14. Verizon must ensure that every subscriber's information is correctly entered into the E 9-1-1 database and that 9-1-1 calls from every telephone customer in Virginia can reach the appropriate Public Safety Answering Point with accompanying Automatic Number Identification information. *Id*

Because Verizon is responsible for *every* listing in the database, its costs for maintaining the database and providing the transport service do not change based on a customer's choice of local exchange carrier. *Green Rebuttal* at 3:11-23. Verizon cannot simply lower its costs for E 9-1-1 services to local governments in exact, dollar-for-dollar proportion to charges assessed by Cavalier to those same governments. *Id.* Even where CLECs such as Cavalier provide transport from their own central offices to Verizon's E 9-1-1 tandem, Verizon still incurs costs associated with E 9-1-1 tandems/routers, databases containing customer information, and the installation and maintenance of trunks to the local jurisdictions. *Green Direct* at 5:10-14.

Verizon does not charge PSAP operators for transport services that CLECs such as Cavalier, rather than Verizon, provide. *See Hearing Tr.* at 188:4-7 ("Mr. Koerner: So you're not saying you are incurring a cost for the portion of that call that Cavalier is transporting? Mr. Green: Oh, no."). But Verizon's approved E 9-1-1 tariff permits it to recover the costs Verizon incurs in providing E 9-1-1 services to municipal governments in Virginia.

Cavalier's suggestion that Verizon help Cavalier explain to municipal governments what services Cavalier provides and justify the prices Cavalier charges (*Cavalier Post-Hearing Brief* at 25-26) is unnecessary and not required by the Act. Verizon describes its own services and provides support for the prices it charges for these services in its tariffs. *See Hearing Tr* (Green) at 190:11-15 ("[W]e deal with thousands – literally thousands of PSAPs, and in all cases, we support our own rates, through either contracts or tariffs in the individual jurisdictions."). Cavalier should do the same. There is no reason for Verizon to help Cavalier justify its prices to its customers. Under Verizon's proposal, Verizon will meet with municipalities to answer any technical questions they have regarding E 9-1-1. Verizon Proposed Section 7.3.9; *see also Hearing Tr.* at 189:5 – 190:18 (Green) (recounting Verizon's long history of accompanying

CLECs to meetings with municipalities to explain technical details). The Act does not require Verizon to do this; that Verizon agrees to do this does not obligate it to do even more. *See Hearing Tr* (Green) at 190:15-18 ("It would be a very, very difficult task for us to go in and support everybody else's rates, and we simply wouldn't have the knowledge to do that.").

Above all, Cavalier's arguments and proposed language are outside the scope of this Section 251 arbitration. As the Commission has recognized, Verizon provides CLECs with non-discriminatory access to wholesale E 9-1-1 services. *See Virginia § 271 Order* ¶ 189. Cavalier's arguments and proposed language would require obligations well beyond the requirements of the law. The Bureau should adopt Verizon's proposed language.

VII. THE BUREAU SHOULD REJECT CAVALIER'S PROPOSED CHANGES TO VERIZON'S LOOP OFFERING AND LOOP QUALIFICATION LANGUAGE (ISSUE C9)

Virtually all of Verizon's proposed loop language comes directly from the *Virginia AT&T Agreement*, except for compromise language offered to satisfy Cavalier's concerns. These terms have been thoroughly vetted by the Bureau, and Cavalier has not offered any good reason why the Bureau should depart from them here.

A. Verizon Provides Non-Discriminatory Access To Its Loop Qualification Database

Cavalier continues to insist that Verizon's Proposed Section 11.2.12, describing Verizon's loop qualification tools, is too "detailed" and that Verizon has proposed it "[w]ithout any specific justification." *Cavalier Post-Hearing Brief* at 27. That is not true. As Verizon has pointed out, these "detailed requirements" were agreed to collectively by the CLECs in the New York DSL Collaborative, and these terms have been approved by several state commissions, including the Virginia SCC. *See, e.g., Virginia Hearing Examiner Report* at 111; *Albert Panel*

Direct at 8:11-13

The Commission has also considered Verizon's loop qualification process in all of its section 271 proceedings and found in every case that it complies with the Act. *See generally Rhode Island § 271 Order* ¶ 61; *New Jersey § 271 Order* ¶ 76 n. 204; *New York § 271 Order* ¶ 140. In the Virginia section 271 proceeding, the Commission confirmed that:

> Verizon provides competitive LECs with access to loop qualification information consistent with the requirements of the *UNE Remand Order*. Specifically, we find that Verizon provides competitors with access to all of the same detailed information about the loop that is available to itself and in the same time frame as Verizon personnel obtain it.
>
> * * *
>
> We find, based on the evidence in the record, that ***Verizon is providing loop qualification information in a nondiscriminatory manner***.

Virginia § 271 Order ¶¶ 29, 34 (emphasis added, footnotes omitted). While Verizon has enhanced its loop qualification process since the Commission issued the *Virginia § 271 Order* to accommodate several CLEC requests, the previously approved contract language Cavalier proposes to delete has not changed. *Albert Panel Direct* at 9:9-12. *Hearing Tr* at 436:3 – 437:7 (Clayton). The Bureau should approve Verizon's language here as well.

Moreover, Cavalier's proposed alternative in its Section 11.2.12(A) and (B), is simply unworkable. Cavalier seeks to delete most of the provisions describing Verizon's loop qualification process. *See* Verizon's Proposed Section 11.2.12.2(C)-(H). Omitting this important information will only lead to confusion and will hinder Cavalier's ability to use the loop qualification process. *Albert Panel Direct* 8:6-10.

Cavalier also proposes a provision that would allow it to transfer DSL customers from Verizon to Cavalier if Verizon starts providing DSL service to a customer who Cavalier was unable to serve. Cavalier's Proposed Section 11.2.13. Cavalier's sole justification for this

provision is that it would remedy Verizon's loop qualification processes that allegedly "favor Verizon over Cavalier in providing xDSL service to a particular customer." *Cavalier Post-Hearing Brief* at 28. But Cavalier has not shown the existence of the problem its "remedy" purports to address. Even Cavalier concedes that it has "few specific examples" of discrimination (*Cavalier Post-Hearing Brief* at 29); in fact, Cavalier provided *no* such examples in its testimony. *See Edwards Direct* at 1:22 – 2:4 (admitting that Cavalier's Proposed Section 11.2.13 is based on "anecdotal[]" situations that Cavalier "has never been able to track precisely."). Instead, Cavalier relies on sketchy information that it provides for the first time as an attachment to its brief, but that information fails to prove any discrimination problem in Verizon's loop qualification process is discriminatory. Indeed, as Verizon explained above, and contrary to Cavalier's claims, the Commission has repeatedly found that Verizon's loop qualification process is nondiscriminatory (*Virginia § 271 Order* ¶¶ 29, 34). Cavalier fails to provide the Bureau with any reason to depart from that conclusion.

In support of its claim, Cavalier relies entirely on isolated and outdated allegations of discrimination contained in documents Cavalier attaches to its brief, but the two specific examples Cavalier raises do not prove discrimination. First, Cavalier cites an episode where it unsuccessfully attempted to provide DSL to a customer who was currently receiving DSL from a different CLEC. *Cavalier Post-Hearing Brief* at 29, Exhibit C9-1. This, of course, does not involve discrimination by Verizon in favor of its retail operations since Verizon was not involved in this example. Second, Cavalier recycles discrimination claims about Verizon's loop qualification tools that were made by NTELOS and Covad during Verizon's section 271 proceeding for Virginia. *Cavalier Post-Hearing Brief* at 29, Exhibit C9-2. The Commission already rejected these claims when it granted Verizon's 271 application (*Virginia § 271 Order* ¶¶

27, 34-37), and they are no more convincing now than they were then.

Both the Commission and the Virginia SCC have held that Verizon provides nondiscriminatory access to its loop qualification database, and the Bureau should reject Cavalier's unsubstantiated claims to the contrary here.

B. Cavalier Is Not Entitled To Expedited Maintenance Intervals For xDSL Loops.

Cavalier contends that maintenance intervals for xDSL loops should be the same as for DS-1 loops "because customers use DSL services in ways similar to how they use T1 circuits." *Cavalier Post-Hearing Brief* at 30. Cavalier's argument fails for a number of reasons. First, maintenance intervals are not set based on how customers use the product. Instead they are set based on the appropriate amount of time that it should take to repair a particular product based on the nature of that particular product. The Virginia SCC has determined that Verizon's maintenance intervals for xDSL loops are appropriately measured against Verizon's maintenance intervals for Plain Old Telephone Service ("POTS"), not DS-1 loops. *Virginia Carrier-to-Carrier Guidelines* at 6. *Albert Panel Direct* at 11:21-23. The Virginia Carrier-to-Carrier Guidelines are developed by all interested participants in ongoing collaborative proceedings before the Virginia SCC. These are revised over time under the auspices of the Virginia SCC, each time with the goal of finding an appropriate retail comparison against which a particular wholesale function should be measured. It was through this involved process that the Virginia SCC ultimately decided that Retail POTS, not Retail DS-1, was the appropriate retail analog for wholesale xDSL maintenance intervals.

Second, Cavalier overlooks the fact that DS-1 loops and DSL loops are very different products. DS-1 loops are a premium product, costing fifteen times more than DSL, capable of carrying far more voice grade channels than DSL loops, and providing shorter maintenance

intervals It makes no sense to allow Cavalier to purchase the less expensive product – DSL loops – but to permit Cavalier to add on features from the more expensive product – DS-1 loops – at no charge. Yet, this is exactly what Cavalier is seeking, and that request should be denied.

C. Verizon Provides DS-1 Loops On Non-Discriminatory Terms.

Cavalier wants DS-1 loops that are better than the DS-1 loops Verizon provides to its own customers.

Under Verizon's proposed language, Cavalier can order a DS-1 loop with a 4-Wire interface at each end. *Hearing Tr.* at 430:17 – 431:5 (Clayton). Despite what Cavalier's witness claims (*See Webb Rebuttal* at 1:15-17), this loop offering is identical to the one that Verizon offers its own retail customers. When either Cavalier or a Verizon retail customer submits an order for a DS-1 loop, a Verizon engineer checks the facilities that are available in Verizon's network at the time the order is placed, and submits the order based on the technology that he or she finds in the field. In some cases, the available technology between a pair of 4-wire interfaces is a 2-wire facility using sophisticated HDSL-2 electronics. In other cases, 4-wire facilities are used, but in all cases, Verizon will provide the requesting customer, whether Cavalier or a Verizon retail customer, with the capacity of a "four-wire transmission channel." *Hearing Tr.* at 430:17-19 (Clayton); Verizon's Channel Services Tariff, S.C.C.-Va.-No. 204, "High Capacity Digital Service – DS1." (Verizon chooses the technology between interfaces when providing DS-1 service to its retail customers).

Cavalier, however, wants better service than Verizon gives its retail customers. It wants a guarantee that, when Cavalier orders a DS-1 loop, it will always get a physical 4-wire facility between interfaces. Cavalier's Proposed Section 11.2 9 Cavalier has not attempted to explain why this result is required by Verizon's nondiscrimination obligation, and plainly it is not. In

addition, if the Bureau adopted Cavalier's proposal, Verizon would have to construct 4-wire facilities if Cavalier ordered a DS-1 loop where 4-wire facilities were not available. The Act, however, does not require Verizon to construct new facilities for Cavalier. *Iowa Utilities Bd. v. Federal Communications Comm'n*, 120 F.3d 753, 813 (8th Cir. 1997) (The Act "requires unbundled access only to an incumbent LEC's *existing* network – not to a yet unbuilt superior one.") (emphasis in original); *Triennial Review Order* ¶ 636 (holding that incumbent LECs are not required to accommodate CLEC "[r]equests for altogether new transmission facilities") Therefore, the Bureau should reject Cavalier's proposal.

D. Verizon Does Not Use Spectral Density Masks To Prevent Cavalier From Deploying "ReachDSL" Technology.

Verizon's proposal meets all of Cavalier's legitimate concerns. Cavalier wishes to deploy its ReachDSL technology which allows it to provide DSL over loops up to 30,000 feet. Cavalier can deploy this technology; Verizon has made this clear. *Hearing Tr.* at 421:13-17; *Hearing Tr.* at 443:17 – 444:1 (Clayton). Nonetheless, in its testimony, Cavalier claims that the standards Verizon includes in its proposed language on spectral density masks (Verizon Proposed Sections 11.2.4-11.2.6, 11.2.8) did not reflect the latest industry standards. *Ko Rebuttal* at 2:13-18 (quoting Section 4.2 of ANSI T1.417-2001); *Cavalier Post-Hearing Brief* at 33. In response, Verizon conferred with Cavalier and updated its language to reflect the latest standards. *See Hearing Tr.* at 425:11-15 (Clayton); *Hearing Tr.* at 448:5-7 (Clayton); Verizon's Proposed Sections 11.2.4, 11.2.6, 11.2.7, 11.2.8, 11.2.8(a) from *Verizon's October 24, 2003 Amended Final Offer.*

Cavalier agreed at the hearing that Verizon's language now accurately reflects existing standards (*Hearing Tr* at 426:10-12 (Perkins) (acknowledging the parties' progress over the proper ANSI standard), but now claims, without citing any specific language, that that Verizon's

language limits Cavalier to Method A under that standard. *Cavalier Post-Hearing Brief* at 33. To remove all doubt, Verizon's contract language allows Cavalier to choose *any method* available under the industry standard cited in Verizon's Proposed Section 11.2.8. Verizon has never objected to any DSL technology proposed by Cavalier. *Hearing Tr.* at 421:4-21 (Clayton). It has certainly never objected to the ReachDSL technology that Cavalier discusses in its brief. *Id.* In fact, Cavalier has never attempted to deploy ReachDSL technology in Verizon's service territory, nor, other than in this proceeding, has Cavalier ever notified Verizon of its intent to do so. *Hearing Tr.* at 443:7-11 (Vermeulen).

For these reasons, Cavalier is wrong when it suggests that Verizon is in violation of the Commission's rules on spectrum management. *Cavalier Post-Hearing Brief* at 34. Those rules, 47 C.F.R Sections 51.230 and 51.231, define acceptable advanced services technologies and impose obligations on incumbent carriers when they deny a CLEC's request to deploy a particular advanced services technology. 47 C.F.R. 51.231(a)(2). As Verizon witness Clayton explained at the hearing, Verizon has never denied a Cavalier request to provide its ReachDSL technology over Verizon's loops:

> I'm not aware of any incident where Cavalier has tried to order our two-wire ADSL loop under 18,000 feet, put their ReachDSL product over it and, for some reason, it's been denied. To my knowledge, that has not happened, and it would not happen.

Hearing Tr. at 444:3-7 (Clayton).

In addition, despite Cavalier's claims in its petition, Verizon's language does not prevent Cavalier from deploying ReachDSL on loops over 18,000 feet. *Hearing Tr.* at 421:13-17 (Clayton) (explaining that ReachDSL can be "ordered today over a two-wire digital designed metallic loop that's between 18 and 30,000 feet [and that Verizon has] not prevented Cavalier from ordering that loop type."). Furthermore, despite Cavalier's contrary claims at the hearing

(*Hearing Tr.* at 437:21 – 438:3 (Ko)), Verizon's language does not prevent Cavalier from deploying ReachDSL on loops under 18,000 feet. *Hearing Tr.* at 443:17 – 444:1 (Clayton) (explaining that "for a two-wire ADSL-compatible loop, [Verizon is] not trying to be restrictive here in any manner, other than to say that we are providing a two-wire metallic loop under 18,000 feet in which a CLEC can opt into conditioning options, if they feel that's required on the loop that they are taking").

There is one remaining technical issue. Cavalier wants the same technical specifications for DSL loops over 18,000 feet to apply to DSL loops under 18,000 feet. Cavalier Proposed Section 11.2.8(a); *Cavalier Post-Hearing Brief* at 32, 34 (same technical specifications for loops "up to 28,000 or 30,000 feet"). Verizon, however, does not have a generic offering of loops "up to 28,000 or 30,000 feet." Verizon's ordering, provisioning, and maintenance systems are designed to distinguish between loops under 18,000 feet and loops over 18,000 feet. Because Verizon's language does not prevent Cavalier from deploying its ReachDSL technology over one of Verizon's numerous, existing under-18,000 foot loop offerings, and because Cavalier has never attempted to deploy ReachDSL over a loop of *any length*, there is no reason for the Bureau to require Verizon to make the extensive modifications to its ordering, provisioning, and maintenance systems that Cavalier's proposed contract language would require

E. Cavalier Provides No Compelling Evidence For The Bureau To Import Rates For Loops And Loop Conditioning From Nearby States.

Cavalier seeks to import the loop conditioning rate from Maryland. *Hearing Tr.* at 470:13-16 (Perkins). The Commission rejected this exact request in the Virginia Section 271 proceeding:

> We also reject [the] argument that Verizon should have chosen a state, such as Maryland ... as an appropriate surrogate for at least some proxy element rates.

Virginia § 271 Order ¶ 128 (citations omitted). Cavalier has not provided any reason for the Bureau to revisit this decision; the only explanation for its proposal is its assertion that "the cost models and data used by incumbents like Verizon are often very similar in nearby states." *Cavalier Post-Hearing Brief* at 35. But the Commission has already found that Verizon's loop conditioning rates comply with TELRIC. *Virginia § 271 Order* ¶¶ 124-126. There is no basis for the Bureau to depart from that finding here.

In addition, Cavalier has not submitted any evidence to support its contention that Verizon's Virginia rates are inappropriate. Cavalier implies that Verizon has not proven that its Virginia rates are TELRIC-compliant (*Cavalier Post-Hearing Brief* at 37), but the Commission has already rejected this Cavalier argument. *Virginia § 271 Order* ¶ 124.

Finally, Cavalier has not explained why it should be entitled to adopt the rates resulting from the *Virginia Arbitration Pricing Order*, other than a passing reference to 47 U.S.C. § 252(i). Neither the Act nor the Commission's rules allow a carrier to adopt a rate separate from the terms and conditions for providing that network element. In order to adopt a rate pursuant to Section 252(i), a carrier must also adopt the related terms and conditions of the element associated with that rate.[2] But since Cavalier has requested various changes to the language in

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[2] *See Application for Adoption by US Xchange of Indiana, LLC of an Interconnection Agreement with Verizon North, Inc and AT&T Communications of Indiana, Pursuant to Section 252(i) of the Federal Telecommunications Act of 1996, No 41268-INT 86,*, 2002 WL 1059769, at ~5 [slip copy, page numbers not defined] (Ind. URC Mar 13, 2002) ("This Commission supports and encourages adoptions pursuant to Section 252(i). Allowing a carrier to adopt into provisions of previously negotiated or arbitrated agreements is certainly pro-competitive. However, it is clear from the Act, the FCC and the U.S Supreme Court that those adoptions must incorporate the rates, terms and conditions that are legitimately related to the individual interconnection, service or element "), *In Re Rhythms Links, Inc* , Docket No. 20226, 1999 WL 33590962, slip copy at ~87 [page numbers not defined] (Tex. P.U C. Nov 30, 1999) ("The Arbitrators find that Rhythms is entitled to 'pick and choose' rates and conditions from other, already approved, interconnection agreements. The Arbitrators find that Rhythms may 'pick and choose' individual elements and rates when it agrees to adopt the legitimately related terms and conditions."), Order on Arbitration; *In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499 ¶ 1315 (1996) ("[w]e conclude that the 'same terms and conditions' that an incumbent LEC may insist upon shall relate solely to the individual interconnection, service, or element being requested under section 252(i).").

the *Virginia AT&T Agreement*, it cannot take a rate from that agreement under Section 252(i), which requires Cavalier to adopt the accompanying terms and conditions associated with that rate. Cavalier has not said whether it wants the accompanying terms and conditions (and indeed in some cases is affirmatively asking the Bureau for terms that are contrary to those in the *Virginia AT&T Agreement*). Therefore, it would be premature for the Bureau to decide now, without knowing whether Cavalier will adopt *all* the related terms and conditions, that Cavalier is entitled to AT&T's rates for loop conditioning

For all of the reasons stated above, the Bureau should reject all of Cavalier's proposed language on this issue.

VIII. THE BUREAU SHOULD REJECT CAVALIER'S PROPOSED CHANGES TO VERIZON'S PROCESSES FOR PROVISIONING DARK FIBER (ISSUE C10)

The Commission has examined Verizon's dark fiber offering in detail, including the changes required by the Bureau in the *Virginia Arbitration Order*, and concluded that Verizon's dark fiber provisioning methods fully comply with Verizon's obligations under the Act. *Virginia § 271 Order* ¶¶ 145-147. Cavalier presents no justification for the Bureau to abandon that conclusion and adopt Cavalier's proposed revisions to Verizon's dark fiber language.

A. Cavalier's Dark Fiber Queue Should Not Be Adopted.

In the end, Cavalier simply argues that because Verizon has a queue process for physical collocation, it should establish a dark fiber queue process, too. *Cavalier Post-Hearing Brief* at 38. This argument has no merit; Verizon's obligation under the Act is to provide dark fiber on a non-discriminatory basis, and the Commission has found that Verizon satisfies that standard. *Virginia § 271 Order* ¶¶ 145-147. Cavalier has not alleged that Verizon discriminates in the provision of dark fiber, and neither the Commission nor any other regulator has ever found that